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IN THE

Supreme Court of The United States

OCTOBER TERM 1968

NO. 82

HIRAM W. MORRIS, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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OPINIONS BELOW

The decisions of the District Court of Appeal, Fourth District, dismissing Petitioner's Appeals are reported at 206 So.2d 286 and 207 So.2d 527. Denial of Certiorari by the Florida Supreme Court is reported at 211 So.2d 213.

JURISDICTION

This Court's lack of jurisdiction will be made to appear under the argument section of this brief.

QUESTIONS PRESENTED

POINT I

WHETHER THIS COURT HAS JURISDICTION UNDER TITLE 28, U.S.C., SECTION 1257?

POINT II

IS IT A DENIAL OF DUE PROCESS TO DISMISS PETITIONER'S CRIMINAL APPEAL FOR LACK OF PROSECUTION BY PETITIONER'S RETAINED COUNSEL, WHEN NO PERSONAL NOTICE WAS GIVEN TO PETITIONER OF SUCH INTENT, AND WHEN, UPON NOTIFICATION OF THE DISMISSAL, PETITIONER IMMEDIATELY RETAINED NEW COUNSEL AND OFFERED TO PROCEED?

APPELLATE RULE INVOLVED

Florida Appellate Rule 6.13, Dismissal of Appeal for Failure to Prosecute, provides as follows:

> "The appellate court may dismiss the appeal if the appellant does not prosecute it as required by these rules. When an appeal is dismissed, the clerk of the appellate court shall file with the clerk of the trial court a certified copy of the order of dismissal."

ARGUMENT

POINT I

THE COURT HAS NO JURISDICTION UNDER TITLE 28, U.S.C. SECTION 1257.

It is essential to the jurisdiction of the United States Supreme Court under Title 28, U.S.C. Section 1257, that a substantial Federal question has been properly raised in the State Court proceedings, **Beck v. Washington**, 369 U.S. 541. From the briefest review of Petitioner's motion to recall mandate and reinstate the appeal, it can be seen that no claim of deprivation of due process was presented to the District Court of Appeal, Fourth District.

This Court is without jurisdiction to consider alleged Federal questions where the state decision rests on an adequate state procedural ground in which the state has a valid interest, **Henry v. Mississippi**, 379 U.S. 443. The decisions herein obviously rest on the state procedural requirement that appeals be promptly prosecuted. The state interest is evident, to assure that if there is error, a new trial can be held before the case is completely stale.

POINT II

IT IS NOT A DENIAL OF DUE PROCESS TO DISMISS PETITIONER'S CRIMINAL APPEAL FOR LACK OF PROSECUTION BY PETITIONER'S RETAINED COUNSEL, WHEN NO PERSONAL NOTICE WAS GIVEN TO PETITIONER OF SUCH INTENT, AND WHEN, UPON NOTIFICATION OF THE DISMISSAL, PETITIONER IMMEDIATELY RETAINED NEW COUNSEL AND OFFERED TO PROCEED.

As Petitioner suggests, this Court has labored long and well to assure that indigents receive effective appellate review. This has been done by making protection of the indigent the duty of the state. Where protection is denied, the state is held accountable. Now, Petitioner urges this Court to provide

similar protection to a person who has hired his own attorney. This would be an unwarranted intrusion into a private relationship.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

By

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West Palm Beach, Florida

Counsel for Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response to Petition for a Writ of Certiorari to the District Court of Appeal, Fourth District, was furnished Honorable Richard Kanner, Counsel for Petitioner, 1150 N.W. 14th Street, Miami, Florida, this _____ day of _____, 1968.

CHARLES W. MUSGROVE

of Counsel